

CHAPTER NO. 452

SENATE BILL NO. 1616

By Haun, McNally

Substituted for: House Bill No. 1132

By Buttry, McDaniel, Cooper, Head

AN ACT To amend Tennessee Code Annotated, Title 54, Chapter 5, Part 8 relative to the removal, relocation or adjustment of utility facilities in conjunction with construction projects undertaken by the Department of Transportation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-5-854, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Within one hundred twenty (120) calendar days following the receipt of such plans, the owner shall mark thereon, or on a copy thereof, the approximate vertical and horizontal locations of underground utility facilities, approximate horizontal location of above-ground utility facilities, a description of each of its existing utility facilities and any proposed new location of such facilities and additional facilities within all rights-of-way shown on the project plans, and prepare a plan and a schedule of calendar days to accomplish the same. The project plans, or a copy thereof, and the plan and schedule of calendar days, shall be returned to the department in care of the person whose name and address are listed on the project plans. Should coordination with other owners be required in order for an owner to prepare a plan and schedule, of calendar days, or should changes to the project plans cause the utility to alter its relocation plan or schedule, then additional time shall be allowed, but in no case shall such additional time exceed the original one hundred twenty (120) calendar days by more than an additional forty-five (45) calendar days.

SECTION 2. Tennessee Code Annotated, Section 54-5-854, is further amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c)(1) After the owner has submitted its plan and schedule of calendar days, the department may approve them if reasonable, or the department may otherwise reasonably direct the owner to install, relocate or adjust its utility facilities in accordance with an approved plan and schedule of calendar days. The department shall communicate such approval or direction to the owner via certified mail.

(2) The department shall establish the date on which the owner may begin the installation, relocation or adjustment of its utility facilities, and the owner shall be given reasonable advance notice thereof by certified mail via a notice to proceed. The owner shall be free to order the required materials associated with the proposed utility relocation or adjustment at this time. No owner shall be notified to begin installation, relocation or adjustment until all health, governmental, and environmental regulatory agencies have approved the submitted plan where applicable.

(3) In the event the department and the owner fail to agree on a reasonable plan and schedule of calendar days to install, relocate or adjust said utility, the owner may proceed with the approved schedule under a reservation of rights notice to the department. Said notice shall be filed within ten (10) days of the issuance of a notice to proceed by the department. Said notice shall contain the owners objections to the relocation schedule and shall state the reasons for said objections. The reservation of rights shall become a part of the administrative record for any subsequent contested case. If any such subsequent contested case results in a revised plan and schedule of calendar days, then any penalty under Section 5 of this act and § 54-5-854(g), shall be determined on the basis of the revised schedule.

SECTION 3. Tennessee Code Annotated, Section 54-5-854, is further amended by deleting subsection (e) in its entirety and by substituting instead the following:

(e) The department shall give its contractor and the owner notice of any change in highway construction which would require any additional relocation or adjustment and the owner shall be given an agreed reasonable time to accomplish such work. In addition, the department shall reimburse the owner for the costs of all materials which have been purchased in association with the utility relocation or adjustment which can not be utilized as a result of the change in the project.

SECTION 4. Tennessee Code Annotated, Section 54-5-854, is further amended by deleting subsection (f) in its entirety and by substituting instead the following:

(f) The department's contractor shall be liable for any damages negligently inflicted to the owner's utility facilities occurring during the time provided in the schedule of calendar days for installation, relocation or adjustment, or during the approved time for any additional relocation or adjustment.

SECTION 5. Tennessee Code Annotated, Section 54-5-854, is further amended by deleting subsection (g) in its entirety and by substituting instead the following:

If any owner fails to comply with and implement the provisions of this section, the contractor, with the consent of the department, may then undertake construction without liability to such owner for damages to the owner's utility facilities, and in addition, such owner shall be liable to the department's contractor for damages resulting from such failure.

SECTION 6. Tennessee Code Annotated, Section 54-5-854, is further amended by adding the following language as a new, appropriately designated subsection:

()(1)(A) In addition, if the owner fails to complete the required installation, relocation or adjustment of its utility facilities within the approved schedule of calendar days as approved by the department, the Commissioner of Transportation shall have the authority to assess and collect from the owner a civil penalty in the amount of five hundred dollars (\$500) for each calendar day after the scheduled completion date that the owner fails to complete the required installation, relocation or adjustment. Owners having less than three thousand (3,000) customers shall be subject to the assessment of a civil penalty not to exceed two hundred fifty dollars (\$250) per calendar day when the owner

fails to complete the required installation, relocation or adjustment of its utility facilities within the approved schedule of calendar days.

(B) The failure of another owner to sufficiently complete its required installation, relocation or adjustment of utilities which interferes with the owner's relocation plan shall constitute an affirmative defense to the assessment of a civil penalty pursuant to the provisions of this section.

(2) Notwithstanding any provision of this subsection to the contrary, no civil penalty shall be assessed for delays that result from catastrophic weather events or acts of God.

(3) During the course of the utility relocation phase of the project, the department shall furnish the owner with monthly progress reports regarding the status of the utility relocations. Said progress reports shall be provided to the owner via certified mail.

(4) The department shall give the owner written notice of the intent to assess a civil penalty and the opportunity to appear before the Commissioner of Transportation or the commissioner's designee to show cause why such penalty should not be assessed. Upon finding that a civil penalty should be assessed, the commissioner or the commissioner's designee shall issue an appropriate order to the owner. If the civil penalty has not been paid in full within ninety (90) days after the entry of such order, the matter shall be turned over to the Attorney General and Reporter for collection, and the owner shall be liable for all expenses associated with the enforcement action, including court costs and attorneys' fees.

(5) Appeals of any decision to assess a civil penalty pursuant to this section shall be undertaken pursuant to the normal procedures for appeal of agency decisions in Tennessee Code Annotated, Title 4, Chapter 5, Part 3.

(6) The moneys collected as civil penalties under this subsection shall be paid into the fund set aside for the utility relocation loan program established under Tennessee Code Annotated, Section 67-3-2001.

SECTION 7. Tennessee Code Annotated, Section 54-5-855, is amended by deleting the section in its entirety and by substituting instead the following:

(a) In the event the department does not notify the owner by certified mail of the approved plan and schedule of calendar days and date for beginning installation, relocation or adjustment within six (6) months after their submission, then the owner shall be allowed to submit a revised cost estimate, when applicable, which shall be incorporated into the utility relocation contract.

(b) In the event the department does not undertake the proposed project within one (1) year after the final approval of the utility relocation plan, the department shall reimburse the owner for all costs of engineering.

SECTION 8. Tennessee Code Annotated, Section 54-5-852, is amended by deleting subdivision (8) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 54-5-852, is further amended by adding the following language as a new, appropriately designated subdivision:

() "Calendar days" means all days shown on the calendar.

SECTION 10. This act shall take effect on July 1, 1999, the public welfare requiring it.

PASSED: May 28, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of June 1999


DON SUNDQUIST, GOVERNOR